IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2104 OF 1992

Ballaso Talab Nadaf ..Petitioner

versus

Vijaykumar S. Landage & Anr. ..Respondents

Ms. Namrata Waghole i/b. Mr. T. S. Ingale for the Petitioner.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 6TH OCTOBER, 2006

ORAL ORDER:

1. Heard counsel for the Petitioner. Respondents served, nobody is present for them.

2. The petitioner has applied before the MACT, Kolhapur for compensation under Section 92A of the Motor Vehicle Act under no fault liability. MACT, Kolhapur heard both the sides and passed an order which is at page 16 of this petition. Paragraph 3 of the said order which is relevant, is reproduced herein below:

> **"I have perused the certified copies of the first information report, the panchnama of the place of accident and the medical certificate in respect of the injuries caused to the applicant. The medical certificate produced by the applicant along with list Ex. 7 shows only 2 simple injuries with specific mention that the X-ray shows no fracture. Today the applicant has produced the certificate, alongwith list Ex. 31 showing permanent disablement of 5%. But in view of the previous medical certificate, I find that the certificate produced today is suspicious and investigation is necessary in order to see whether there was permanent disablement or not. Therefore, I find that the applicant failed to prove at this stage that he has suffered permanent disablement."**

The order of rejection does not appear to be sound. If at all the MACT was going to enquire into and find out whether there was permanent disablement or not, then MACT could have deferred its order till the enquiry is fully made in that regard but instead of doing that the MACT rejected the application closing all the doors of the petitioners to remove the anomaly and make out a clear cut case for entitlement of compensation under no fault liability.

3. Counsel for the petitioner has no instructions whether any application for compensation otherwise than for no fault liability

was made before the MACT, Kolhapur. In any case this order has to be set aside. In the result, the Petition is allowed. Rule is made absolute. The impugned order of the MACT, Kolhapur dated 6.1.1992 is set aside. MACT, Kolhapur, to permit the petitioner to prove his claim and contention regarding entitlement of compensation under no fault liability by producing the oral as well as documentary evidence and then decide the matter on merits. Petitioner to appear before the MACT, Kolhapur on 10.11.2006 with certified copy of this order. Needless to say that MACT, Kolhapur will hear all the concerned parties. Certified copy expedited.

(D.G. DESHPANDE, J.)